

BAY STATE HYDROPOWER ASSOCIATION

55 UNION STREET, 4TH FLOOR

BOSTON, MA 02108

V: 617-367-0032

F: 617-367-3796

October 1, 2008

Massachusetts Department of Energy Resources
100 Cambridge Street
Boston, MA 02110-1313

Re: Comments of Bay State Hydro Association Regarding Feasibility of Compliance with Import Provisions of the Green Communities Act

Dear Sir/Madam:

The Bay State Hydro Association ("BSHA") hereby comments upon the "feasibility" of compliance with the Provision of Section 105 of the Green Communities Act (the "Act"), pursuant to the request for comments provided the Department. The BSHA is comprised of over 90% of the owners of the hydro facilities in Massachusetts.

The term "feasible" in both Black's Law Dictionary (Sixth Edition, 1990) and Webster's Dictionary ("feasible." Webster-Dictionary. 2008 Webster Online. 1 October 2008 <http://www.webster-dictionary.net/definition/feasible>) is defined as "capable of being done, executed, affected or accomplished." As set forth below, the Association strongly believes that, for both the provisions of Section 105(c) regarding the commitment of capacity to serve the rate payers of NEPOOL, and Section 105(e) regarding the netting of imports and exports to rest assure net benefit to the rate payers of New England, compliance is entirely feasible.

With respect to the import of energy and capacity of external intermittent units, the market rules and manuals of ISO-NE provides a clear set of procedures which are entirely workable to any party that actively oversees and manages its assets (see, for example, attached Manual M-20 "Installed Capacity", Sections 3.2.2, 3.3.3, 3.4.7, 3.4.8, and 3.8.7). The basic obligation of participating in the day-ahead markets is readily manageable and by no means prohibits participation by intermittent resources. Indeed, ISO-NE treats import transactions on a "unit-blind" basis such that importers may cover day-ahead commitments with other energy sources (often at a net profit) if and to the extent a particular external unit does not perform as scheduled. Section 105(c) merely assures that external units participating in the Massachusetts RPS initiative provide a degree of reliability benefits to NEPOOL, and thus to Massachusetts ratepayers, that is more reasonably comparable to that provided by native units located within

this control area. This serves to establish that the delivery of renewable energy into NEPOOL must meet a standard that is inherent to internal renewable resources and not merely delivery at the external supplier's convenience.

Some commenter's at the Department's September 23rd hearing on the import provisions sought to claim these provisions were infeasible due to Commerce Clause complications since no such requirement was imposed on internal renewable resources. The BSHA has yet to hear any credible argument that implementation of Section 105(c) will place any burdens on interstate commerce. For the record, BSHA members are ready, willing and able to maintain their available capacity within the NEPOOL boundaries to receive RPS credit. While, on the other hand, external renewable incentive mechanisms are effectively closed to BSHA members as well as to other internal renewable energy providers. As such, it appears that the Commerce Clause argument targeted against the Act's import provisions is a red herring, and arbitrarily being used to unduly complicate these discussions with the Department and to delay the environmental and reliability benefits sought by the Legislature under the Act.

The provisions of Section 105(e) are similarly workable and have no feature that would prohibit implementation. The simple and legitimate concern addressed by the legislature was that any party receiving the benefits of the Massachusetts RPS should, at a minimum, provide a net increase in the amounts of renewable energy consumed within this control area. Such provision would preclude, for example, "back-to-back" and "green wash" transactions, where the net impact of renewable imports to New England is offset by exports of system power from New England, which exports would typically result in the dispatch of incremental amounts of thoughtful generation within this control area. To the extent that the Department wishes to avoid excess reporting burdens, it could craft its regulations to exclude exports conducted by trading-desk affiliates for the account of parties other than those seeking credit for the renewable imports. Further, the Department could, if it so chooses, avoid unnecessary paperwork by allowing compliance by self-certification, with resort to transactional data from ISO-NE only in the event of compliance inquiries. The Department was granted express authority by legislature under Section 105(f) to adopt any regulations and requirements to implement Section 105, including Subsections 105(c) and (e).

In conclusion, the Legislature has carefully considered the relevant issues and has determined that the substantive provisions of Section 105(c) and Section 105(e) are required and in the public interest, subject only to the Department's determination of feasibility. For the reasons outlined above, the BSHA respectfully submits that Sections 105(c) and 105(e) are feasible under the ordinary meaning of the term. We further respectfully request that the Department should implement such provisions as soon as possible with any regulations and requirements it deems appropriate.

Sincerely,

Thomas A. Tarpey
President